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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,929	11/19/2003	Karl Guthrie	P 6040.13006	3155
74310 7590 10/22/2008 Portland Intellectual Property, LLC 900 SW Fifth Avenue, Suite 1820 Portland, OR 97204				
EXAMINER				
LUGO, CARLOS				
ART UNIT		PAPER NUMBER		
3673				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/718,929

Applicant(s)

GUTHRIE ET AL

Examiner

CARLOS LUGO

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 34-36 and 55-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 34-36 and 55-59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
- Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is in response to applicant's amendment filed on July 14, 2008.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claim 58 is rejected** under 35 U.S.C. 102(b) as being anticipated by US Pat No 1,577,133 to Learnihan.

Learnihan discloses a method for anchoring to an object (10) having a hole therethrough leading to an opening space, comprising the steps of: providing a safety toggle bolt having a handle member (13) and a toggle bar (6 and 7) pivotally connected to the handle member; locking the toggle bar in a closed position (by means of 11, Figures 2 and 3); inserting the safety toggle bolt through the hole; and pushing on the handle member so as to unlock the toggle bar from the closed position, wherein the toggle bar automatically opens to an open position (Figure 1).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 34-36, 58, and 59 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 3,332,118 to Temple et al (Temple) in view of US Pat No 5,702,218 to Onofrio, US Pat No 4,615,514 to Hamlin and further in view of US Pat No 3,288,014 to Mortensen.

Regarding claims 34 and 63, Temple discloses a bolt comprising a flexible cable (1) and a toggle bar (3) connected to the end of the cable. The bolt is capable of holding a user to prevent the user from falling. The toggle bar is adapted to pivot between a closed position for insertion through the hole and an open position in which the bar cannot be withdrawn.

However, Temple fails to disclose that the bolt further comprises a hole plug, that an end of the toggle bar is adapted for locking engagement with the hole plug in the closed position, a plug biasing spring for biasing the hole plug toward the toggle bar, a toggle pivot control member for manipulation of a toggle bar and that the hole plug includes separate apertures for the cable and the control member.

Onofrio teaches that it is well known in the art to provide a similar device that includes a rod connected to a bar, and a hole plug (16') that is fitted in a hole of a structure capable of centering the device in place. Onofrio illustrates that the plug has a "substantially" cylindrical hole plugging portion circumferentially engaging the hole (22). Onofrio further teach the use of a plug biasing compression spring (26) for biasing the hole plug (16') toward the toggle bar.

Hamlin teaches that it is well known in the art to provide a hole plug (36) that includes a recess that is capable of receiving and holding a toggle bar in a closed position.

It would have been obvious to one having ordinary skill in the art to provide the device described by Temple with a hole plug, as taught by Onofrio and Hamlin, in order to held the bar in a closed position and to center the device when is placed with respect to the structure.

Hamlin teaches that it is well known in the art to use of a toggle pivot control member (24 and 26) for manipulation of a toggle bar between open and closed positions of the toggle bar. The toggle pivot control member includes a handle end (25 and 27) and a control end (28 and 30) attached to the toggle bar.

Mortensen teaches that it is well known in the art to provide a plug (10) that includes apertures (Figures 5 and 6) so that a member (38) and a pivot control member (26) can extend in a respective aperture.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Temple with a control member, as taught by Hamlin, in order to manipulate the toggle bar between an open and a closed positions.

Further, it would have been obvious to provide temple with a hole plug that comprises respective apertures for the members that extends through the plug, as taught by Mortensen, in order to separate the members so as to prevent any rupture or damage between the members that pass through the plug.

As to claim 35, Temple, as modified by Onofrio, Hamlin and Mortensen, teaches that the end of the toggle bar is adapted for releasable retention in a recess of the hole plug to provide the locking engagement.

As to claim 36, Temple, as modified by Onofrio, Hamlin and Mortensen, teaches that the end of the toggle bar is tapered to provide for the retention.

As to claims 58 and 59, Temple, as modified by Onofrio, Hamlin and Mortensen, teaches a method for anchoring to an object having a hole therethrough leading to an opening space comprising the steps of providing a safety toggle bolt having a handle member and a toggle bar pivotally connected to a cable; locking the toggle bar in a closed position; inserting the safety toggle bolt through the hole; and pushing on the handle member so as to unlock the toggle bar from the closed position and releasing the handle member after pushing the handle member so that the toggle bar is automatically pulled toward the hole plug to adjust the bolt.

6. **Claims 55-57 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 3,332,118 to Temple et al (Temple) in view of US Pat No 5,702,218 to Onofrio, US Pat No 4,615,514 to Hamlin and in view of US Pat No 3,288,014 to Mortensen, and further in view of US Pat No 5,209,621 to Burbidge.

Temple, as modified by Onofrio, Hamlin and Mortensen, fails to disclose that the toggle bar further comprises a toggle bar return spring attached to the toggle bar.

Burbidge teaches that it is well known in the art to have a toggle bolt assembly comprising a toggle bar (18) that has a toggle bar returns spring (40).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate into Temple's device a toggle return spring, as taught by Burbidge, in order to bias the toggle bar to the open position after been inserted through the opening.

7. **Claim 59 is rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 1,577,133 to Learnihan in view of US Pat No 5,702,218 to Onofrio.

Learnihan fails to disclose that the toggle bolt has a hole plug.

Onofrio teaches that it is well known in the art to provide a similar device, comprising a handle (12) and a toggle bar (18 and 20) and further comprising a hole plug (16') to be placed on the hole of the structure.

It would have been obvious to one having ordinary skill in the art to provide the device described by Learnihan with a hole plug, as taught by Onofrio, in order to center the device when is placed with respect to the structure.

Response to Arguments

8. Applicant's arguments filed on July 14, 2008 have been fully considered but they are not persuasive.

As to the rejection in view of Onofrio, as a base reference, the rejection has been withdrawn, although not because of the applicant's arguments, which are not persuasive.

Onofrio discloses the use of a threaded rod attached to the toggle bar. Temple teaches that the use of a cable is well known in the art. At the instant, providing a cable instead of the threaded rod into the device described by Onofrio will not affect

the rotational movement of the bar in the event that the user desires to firmly attach the toggle bar to the surface (as argued by the applicant).

However, providing the cable will not allow the device described by Onofrio to adjust vertically the device. Onofrio requires that by the threaded connection, the device would be capable of being adjusted vertically. Therefore, for that reason, and not because of the applicant's arguments, the rejection has been withdrawn.

As to the rejection of the claims in view of Temple, as modified by Onofrio, Hamlin and Mortensen, the rejection is maintained.

Furthermore, a new 102(b) rejection has been made on the record for claim 58 in view of Learnihan, and a new 103(a) rejection in view of Learnihan, as modified by , since the claims are broad and does not claim the whole invention.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing

date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARLOS LUGO whose telephone number is (571)272-7058. The examiner can normally be reached on 10-7pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Engle can be reached on 571-272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Carlos Lugo/
Primary Examiner
Art Unit 3673

October 20, 2008